IN THE HIGH COURT OF DELHI

RSA No.59/2007

Union of India & Others ..... Appellant
! through: Mr.R.S.Nirwal, Adv.

VERSUS

$ Lal Chand ..... Respondents
^ through: Mr.Mahendra Singh, Adv.

RESERVED ON: 07.12.2007

% DATE OF DECISION: 11.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**
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1. On 19.4.2007 the following question of law was framed :-

> "Whether the respondent is entitled to receive Rs.1 lakh in the absence of the proof of the medical record?"

2. Lal Chand (the respondent) filed a suit for damages in sum of Rs.1 lakh alleging that on 5.7.1999 at 3:30 P.M. when he was drinking water from a tank adjacent to the wall of Delhi Public Library a tree fell on to the wall due to which he suffered injuries on the right hip and lower limb. That he was given

medical treatment at LNJP Hospital. He claimed to have suffered the following loss :-

1.	Expenses incurred towards nourishment	-	Rs. 10,000.00
2.	Expenses for transportation	-	Rs. 5,000.00
3.	Cost of cloths and materials	-	Rs. 5,000.00
4.	Pain and Suffering	-	Rs.1,00,000.00
5.	Loss of Income for 9 months (9 x 3000)	-	Rs. 27,000.00
6.	Mental Agony	-	Rs.1,00,000.00
7.	Disability	-	Rs.1,00,000.00
8.	Loss of earning Power	-	Rs.1,00,000.00
	Total :		Rs.4,47,000.00

3. Claim was however restricted to Rs.1 lakh as being a poor man, Lal Chand was provided legal aid and the legal aid board recommended that claim could not be more than Rs. 1 lakh.

4. Appellants who were impleaded as defendants filed their written statement in para 2 and 5 of the preliminary objections whereof it was pleaded as under :-

> "2. That the defendants took all possible care to make the general public aware about the fall of the wall of the Delhi Public Library by way of sticking of bills on the said wall about the danger of the fall of the said wall. Not only this, the defendants had sent the letters to the SHO, PS Chandni Chowk not to allow anybody to sleep or walk near the wall. The defendants also wrote letters to the CPWD regarding the repair/re-construction of the said wall and also wrote the letters to the Asstt. Director (Horticulture), MCD for cutting the said tree much earlier than the fall of the said wall.
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> x x x x x x x x x x x x
>
> 5. That the said fall of the wall and tree as stated in the plaint occurred due to the heavy storm and therefore, the said wall was a natural calamity. The same has also been admitted by the plaintiff in the

Police complaint that the wall and the tree of the defendants had fallen due to the heavy storm. The plaintiff had knowledge that the wall contained the stickers/posters to make the general public aware towards fall of the said wall and despite this fact, the plaintiff as per his statement in the Police complaint had proceeded towards the tree even after seeing that the storm was coming."

5. Lal Chand examined himself as PW-1. No other witness was examined by him. Apart from proving the statutory notice under Section 80 CPC served by him upon the defendants, relatable to his injury he proved the medical record of his treatment at LNJP Hospital as Ex.PW-1/1 (17 sheets) and a disability certificate issued by same hospital, Ex.PW-1/2. The same certified that he had suffered 40% permanent disability of the lower limbs. The certificate is dated 15.2.2000.

6. Appellants examined H.R.Meena, Dy. Director (Admn.) of Delhi Public Library as DW-1. He proved the correspondence with the S.H.O P.S. Chandni Chowk, the Deputy Commissioner of Police, Assistant Director (Horticulture) MCD, Executive Engineer (C.P.W.D.) and the Director (Forest). The same are Ex. DW-1/A to DW-1/G. All acknowledge the pathetic state of the boundary wall and the precarious bending of the trees on the boundary wall. The language of said exhibits is self speaking. They are as under :-

(Ex. DW-1/A)

"DPL(Gen.)/Misc./1/98-99/CL-263 11 Jan., 99

The S.H.O.,
Police Station,
Chandni Chowk,
DELHI-110006

Subject : Not allow to anybody to sit/sleep adjacent the wall of Delhi Public Library.

Sir,

You are aware that the DPL is situated at S.P.Mukherji Marg(Opp. Old Delhi Rly. Station) since 1951.

It is to inform that the boundary wall of DPL in front side is very pathetic and probably any casualty can be occur. It is to be repaired, which will take time. Daily some people sit in the day and also sleep in the night just adjacent the wall of DPL.

It is requested that you may not allow to anybody to sit/sleep adjacent the wall of DPL so that any casualty may not be occurred.

Thanking you,

Yours faithfully,

sd/-
(H.R.MEENA)
DY.DIRECTOR(TECH.)

x x x x x

(Ex.DW1/B)

DPL/Genl./Misc./98-99/ 3rd Feb., 99

The Dy. Commissioner of Police,
Police Station,
Chandni Chowk,
Delhi-110006.

Subject: Not allow to anybody to sit/sleep adjacent the wall of D.P.L.

Sir,

Please refer to this Office letter No.DPL/Genl./Misc./98-99/CL-263 dt. 11.1.99 on the above noted subject.

It is requested that this Office has informed that the boundary wall of DPL in front side is very pathentic and probably at any time casualty can be occurred. It is to be repaired by the C.P.W.D which will take time. Daily some people sit in the day and also sleep in the night just adjacent the wall of the D.P.L. till now.

It is again requested that you may not allow to anybody to sit/sleep adjacent the wall of DPL so that any casualty can be avoided.

Thanking you,

Yours faithfully,
sd/-
(H.R.MEENA)
Dy. Dir. (Tech.)

Copy to: The A.C.P., Police Station, Chandni Chowk, Delhi-6.

The S.H.O., Chandni Chowk, Police Station, Delhi-6.

x x x x x

(Ex.DW-1/C)

DPL/Genl./98-99/CL-456/ 15th Feb., 99

The Assistant Director (Horticulture),
Municipal Corporation of Delhi,
Room No.22,
Minto Road,
NEW DELHI.

Subject: Permission to cut some big trees in premises of D.P.L.

Sir,

Delhi Public Library is situated at S.P.Mukherji Marg, Delhi-6 since 1951.

It is to inform that some trees are so big which are bending on boundary wall and also destroying the boundary wall. Due to these trees the boundary wall of DPL is now very pathentic and any casualty can be occurred at any time because many Hawkers, people sit/sleep in the day/night just adjacent the wall and this is also a pedestrian for people to go. Therefore, it is necessary to cut all the big trees to avoid any casualty.

It is requested that kindly arrange to cut these trees immediately. If not possible, give the No Objection Certificate so that this Office could arrange to cut these trees from the local market.

An early action in the mater shall be highly appreciated.

Yours faithfully,

sd/-
(H.R.MEENA)
Dy. Dir. (Tech.)

x x x x x

(Ex.DW-1/D)

DPL/Genl./98-99/433 -CT 8th Feb., 99

The Executive Engineer (Const.),
C.P.W.D.
I.T.O.
New Delhi

Subject: Construction of Boundary Wall of Delhi Public Library,S.P.Mukherji Marg, Delhi – 110006.

Sir,

The Delhi Public Library is situated at S.P.Mukherji Marg, Delhi-6 since 1951.

The Boundary Wall of Delhi Public Library in front side at left hand is very pathetic, bent and probably it may be fallen at any time and any casualty can be occurred. It is to be repaired urgently. Therefore, it is requested that you may please depute your Official for inspection and give the estimate at the earliest. If it is not possible, please give us No Objection so that boundary wall can be repaired from the Local Market urgently to avoid any casualty.

Thanking you,

Yours faithfully,
sd/-

(H.R.MEENA)
DY. DIRECTOR (TECH.)

x x x x x

(Ex.DW-1/E)

DPL/Genl./98-99/XXVI/CL-908 19th Feb., 99

The Executive Engineer (Const.),
C.P.W.D. C.D. VI,
I.T.O.,
New Delhi.

Subject: Construction of Boundary Wall of Delhi Public Library, S.P.Mukherji Marg, Delhi -110006.

Sir,

The Delhi Public Library has also written a letter No. DPL/Genl./98-99/433 CT dt. 8.2.99 on the subject noted above.

This Office has already informed that the condition of boundary wall is very pathetic and at any time it can fell down which will definitely occur any

casualty but neither any action has been taken by your Deptt. so far nor given any reply or No Objection Certificate to the DPL.
It is again requested that kindly take action immediately to avoid any mis-happening near future due to pathetic boundary wall of DPL, S.P.Mukherji Marg, Delhi.

An early action in the matter shall be highly appreciated.

Yours faithfully,
sd/-

(H.R.MEENA)
Dy. Director (Tech.)

x x x x x

(Ex.DW-1/F)

DPL/Genl./98-99/XXVI/CL-909 19th Feb., 99

The Director (Forest),
Municipal Corporation of Delhi,
Forest Deptt.,
Kamla Nehru Ridge,
Khaiber Pass,
DELHI

Subject: Permission to cut some big trees in the premises of D.P.L.

Sir,

Delhi Public Library is situated at S.P.Mukherji Marg, Delhi-6 since 1951.

It is to inform that there are some big trees near inside the boundary wall of DPL which are bending on boundary wall and also destroying it. Due to these trees the boundary wall of DPL is now very pathetic and any casualty can be occurred at any time because many Hawkers, people sit/sleep in the day/night just adjacent the wall and this is also

pedestrian for people to go. Therefore, it is necessary to cut all these big trees to avoid any casualty.

It is requested that kindly arrange to cut these trees immediately. If not possible, give the No Objection Certificate so that this Office could arrange to cut these trees from the local market.

An early action in the matter shall be highly appreciated.

Yours faithfully,
sd/-
(H.R.MEENA)
Dy. Director (Tech.)

x x x x x

(Ex.DW-1/G)

2nd Reminder

Ref. No. DPL/Genl./XXVI/ 23rd March, 1999

The Executive Engineer (Construction),
C.P.W.D.,
I.T.O., Minto Road,
New Delhi

Subject: Construction of Boundary Wall of Delhi Public Library,S.P.Mukherji Marg, Delhi -110006

Sir,

Kindly refer to our Office Letter No.DPL/Genl./98-99/433 C.T. dated 8.2.1999 subsequent reminder dated 19.2.1999 on the subject cited above.

The Delhi Public Library have already inform you for the pathetic condition of boundary wall. But unfortunately no action has been taken by your department so far. We are once again requested you to kindly take necessary action immediately to avoid any mishappening near future due to pathetic

condition of boundary wall of Delhi Public Library, S.P.Mukherjee Marg, Delhi-110006.

An early action in the matter shall be highly appreciated.

Yours sincerely,

sd/-
(H.R.MEENA)
Deputy Director (Tech.)"

7. Appellants failed to prove that any storm had taken place on 5.7.1999. The trial court believed Lal Chand. It noted Ex. DW-1/A to DW-1/G. It noted Ex.PW-1/1 and Ex.PW-1/2. It noted the observations of the Hon'ble Supreme Court reported as AIR 1999 SC 1929 *MCD Vs. Sushila Devi* as under :-

"By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the defendant is liable for any injury caused by the fall of the tree (see Brown v. Harrison, (1947) 63 TLR 484; Quinn v. Scott. (1965) 1 WLR 1004, Mackie vs. Dumbartonshire Country Council, (1927) WN 247. The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In Municipal Corporation of Delhi v. Subhagwanti, AIR 1966 SC 1750, a clock tower which was 80 years old collapsed in Chandni Chowk Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew

> nor ought to have known the danger. "The owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect,"- said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer by then such tree or branch must be removed so as to aver the danger to life."

8. It noted that Lal Chand was a daily wager. It noted that medical record showed that Lal Chand remained under medical treatment for 9 months. It noted that in 1999 minimum wages were Rs.3000/- p.m. It noted 40% disability of the lower limbs suffered by Lal Chand. The compensation granted was as under :-

> "Although, the plaintiff has not placed on record any document to show that he incurred any amount on purchase of medicines or on extra diet and nutrition but it cannot be disputed that the plaintiff must have incurred some amount on extra nutrition and diet as well as on transportation for attending the doctors at the hospital. Plaintiff has claimed a sum of Rs.15000/- towards nourishment and transportation charges. However, the Court is of the view that the plaintiff should be awarded a sum of Rs.5000/- under the aforesaid head. Plaintiff has claimed further amount of Rs.27000/- towards loss of income for a period of 9 months when he remained confined to bed. It has been established on record that pltff was confined to bed for 9 months or so. However, Ld. Cl for defts had argued that pltff has failed to show his income on record. Still considering the minimum wages prescribed by concerned authority under Minimum Wages Act, a sum of Rs.3000/- per month cannot be said to be unreasonable or unjustifiable by any stretch of imagination. Therefore the Court awards a further sum of Rs.27000/- in favour of pltff and against the

defts. towards loss of income. The pltff has reduction of his capacity to work and earn after the incident in question. In this manner, the monthly income of the pltff would be reduced by 40% or so. Pltff was aged about 55 years on the date of incident as per material on record. He would have worked for further period of about 5 years in case the average date of retirement is taken to be 60 years. In this way, the loss of earning power of pltff would come out to Rs.72000/- for the aforesaid period. The plaintiff is also entitled to damages for mental agony and sufferings which he had undergone because of the incident in question. The pltff has claimed a sum of Rs.One lakh towards pain and suffering and another sum of Rs. One Lakh towards mental agony. However, there is no cogent evidence led by him on this aspect. Considering the age of pltff, his place of residence, nature of work pleaded by him, his family background and the circumstances under which the incident had taken place,ends of justice would be met by awarding a sum of Rs.20,000/- in favour of pltff. under the aforesaid head. Thus, in all, a pltff is entitled to a decree for a sum of Rs.1,24,000/- towards damages/compensation. Pltff has paid Court fees only on Rs. One lakh and has claimed a decree for a sum of Rs. One lakh only. Therefore, the awarded amount is restricted to Rs. One Lakh only. Issue is decided accordingly."

9. The regular first appeal filed by the appellants was dismissed. Appellants have persisted by way of second appeal.

10. Since only question which needs to be answered in the second appeal is the question as noted in para 1 above. I need not express my opinion on any other issue.

11. For a tortious act of the wrong doer the victim is entitled to pecuniary loss to be recompensed and additionally non-pecuniary loss.

12. Pecuniary loss would include loss of wages; future

loss of wages; expenses on medical treatment; allied expenses due to the injury for example special diet, availing special transport, keeping attendant etc.

13. Non-pecuniary loss include mental trauma; disfigurement of the body; loss of enjoyment of life; pain and suffering; loss of marriage prospects etc.

14. Noting that Lal Chand was treated at a government hospital no money has been awarded on medical treatment. The sum awarded is as under :

a)	Special Diet and Transport	.....	Rs. 5000/-
b)	Loss of wages for 9 months	.....	Rs.27,000/-
c)	Loss of future income (40%)	.....	Rs.72,000/-
d)	Pain and suffering	.....	Rs.20,000/-
	Total		Rs.1,24,000/-

15. But since suit claim was in sum of Rs.1 lakh the decree has been restricted to said sum. I note that Ex.PW-1/1 is the medical record of the treatment undertaken by Lal Chand at LNJP hospital.

16. Keeping in view that Lal Chand remained under medical treatment for 9 months and suffered 40% disability of the lower limbs due to the mishap and was a daily wager, minimum daily wage as of 1999 being Rs.3000/- p.m. the compensation assessed is fair and reasonable.

17. The question of law framed is answered as under :-

"In view of Ex.PW-1/1, being the medical record of Lal Chand pertaining to medical treatment given to him at LNJP hospital spreading over 9 months the medical record running into 17 sheets and Ex.PW-1/2 being the disability certificate issued by LNJP hospital the compensation awarded to Lal Chand is fair, reasonable and just."

18. The appeal is dismissed.

19. Cost is awarded to the respondent in sum of Rs.5000/-.

20. LCR be returned.

December 11, 2007
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PRADEEP NANDRAJOG
JUDGE